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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/806,940      | 03/23/2004  | Richard B. Finnie II | MR-102              | 2863             |

39396 7590 09/04/2007  
LAW OFFICES OF MARK A. HAMILL, P.C.  
45 SOUTH PARK BLVD.  
SUITE 205  
GLEN ELLYN, IL 60137

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| EXAMINER |
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ELOSHWAY, NIKI MARINA

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| ART UNIT | PAPER NUMBER |
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3781

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| MAIL DATE | DELIVERY MODE |
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09/04/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| <b>Office Action Summary</b> | Application No. | Applicant(s)       |
|------------------------------|-----------------|--------------------|
|                              | 10/806,940      | FINNIE, RICHARD B. |
| Examiner                     | Art Unit        |                    |
| Niki M. Eloshway             | 3781            |                    |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 11 July 2007.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-21 is/are pending in the application.  
4a) Of the above claim(s) 16-21 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-15 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 7/11/07.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_ .

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 16-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without traverse** in the reply filed on July 11, 2007.
2. Applicant's election without traverse of the product claims 1-15 in the reply filed on July 11, 2007 is acknowledged. Please note, that claim 21 is drawn to the non-elected method.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4, 6, 7, 12, 13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Beale et al. (U.S. 2003/0047838). Beale et al. teaches a receptacle for a single serving food item made, such as a muffin (see paragraph [0020]), made of silicone rubber material (see line 2 of paragraph [0020]). The receptacle 100 shown in figure 1, comprises a body portion 104. Each body portion 104 includes, a planar base is shown at lead line 108, and an annular side wall is shown at lead line 106.

In paragraph [0034], Beale et al. describe a muffin tray which receives a plurality of single serving food products. In paragraph [0038], Beale et al. disclose that “the apparatus ... are not limited to tray having a plurality of wells or cavities”.

The injection molding, set forth in claim 4, is disclosed in paragraph [0043].

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beale et al. (U.S. 2003/0047838) in view of Zoss (U.S. 2002/0112614). Beale et al. teaches a receptacle for a single serving food item made, such as a muffin (see paragraph [0020]), made of silicone rubber material (see line 2 of paragraph [0020]). In paragraph [0038], Beale et al. disclose that “the apparatus ... are not limited to tray having a plurality of wells or cavities”.

Beale et al. do not teach the ridges of the sidewall nor does Beale et al. state that the receptacles may fit within a cupcake pan. Zoss teaches that it is known to form individual baking containers with pleated sidewalls (see paragraph [0005]) that fit within cupcake pans. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the receptacles of Beale et al. with the sidewalls having ridges and valleys, as taught by Zoss, and being a sized to fit within cupcake pans, in order to allow for expansion during baking (disclosed in lines 8-10 of paragraph [0005] of Zoss) and in order to conform with consumer expectations (disclosed in lines 10-13 of paragraph [0005] of Zoss).

7. Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zoss (U.S. 2002/0112614) in view of Llorente Hompanera (U.S. 2001/0043977). Zoss discloses the claimed invention except for the liners being formed of a silicone resin. Llorente Hompanera teaches that it is known to provide baking containers of any shape and size made of silicone resin (see paragraphs [0013] and [0027]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the baking liners disclosed in paragraph [0005] of Zoss made of silicone resin, as

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taught by Llorente Hompanera, in order to give the liners durability, flexibility with the ability to recover the original shape, heat resistance and low adherence (as set forth in paragraphs [0013] through [0023] of Llorente Hompanera).

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

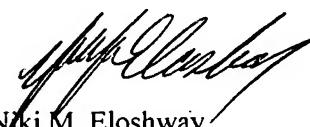
The prior art is cited for the baking structure.

9. THIS ACTION IS NON-FINAL.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshtay whose telephone number is 571-272-4538. The examiner can normally be reached Monday through Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Niki M. Eloshtay  
Examiner  
Art Unit 3781